

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3704

IN THE MATTER OF:

Served April 29, 1991

Formal Complaint of AIR COURIERS )  
INTERNATIONAL GROUND TRANSPORTATION)  
SERVICES, INC., Trading as )  
PASSENGER EXPRESS Against MADISON )  
LIMOUSINE SERVICE, INC. )

Case No. FC-90-02

By motion filed February 26, 1991, Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express (ACI) seeks six subpoenas duces tecum to compel production of documents and to effect their sponsoring at hearing. ACI asks that subpoenas be addressed to Marwan M. Hajoun, President, Madison Limousine Service, Inc. (MLS), and named representatives of Lufthansa Airlines, All Nippon Airways, Saudi Arabian Airlines, Aeroflot Airlines, and Pan American World Airways, Inc.

On March 4, 1991, MLS, responded to ACI's request for subpoenas. \*/ MLS, through counsel, states that it does not object to the issuance of a subpoena, as requested by ACI, directed to Marwan Hajoun, MLS's president, or to Pan American World Airways, Inc. MLS does object to the issuance of any subpoena duces tecum directed to Lufthansa Airlines, All Nippon Airways, Saudi Arabian Airlines, and Aeroflot Airlines or their officers, agents, or employees. As grounds for this objection MLS asserts that through its request for subpoenas, ACI seeks a "fishing license" which, if granted, would irreparably and irretrievably injure MLS's business relationship with its most valued customers. MLS further asserts that issuance of the subpoenas is unnecessary to this case inasmuch as Mr. Hajoun is capable of providing documents relating to all the airlines listed by ACI in its request for subpoenas and Mr. Hajoun will be present at the hearing to testify regarding the documents. In summarizing its position MLS states:

---

\*/ In its response MLS addresses the issue of its standing to object to a subpoena issued to a third party. MLS recognizes that any objection to a subpoena should be made by the person to whom the subpoena is addressed via a Motion to Quash. MLS states that this procedure ". . . would unleash the very economic catastrophe that respondent not unreasonabl[y] seeks to avoid." In support of its position MLS relies on general principles of equity and the silence of Commission Rule No. 18 on the matter of standing. The response will be received as an objection to a motion in a case to which MLS is a party and in the interest of fully considering the matter. Motions to quash specific subpoenas will be accepted only from the persons to whom the subpoenas are addressed.

Respondent stands ready, willing and able at all times to cooperate fully, completely and candidly with the Commission in the discharge of its statutory responsibilities. But by the same token it begs the Commission as matter of simple fairness and equity not to let it be destroyed in the process. A destruction which would surely follow should the objected to subpoenas be issued. Any subsequent exoneration and vindication of respondent would then become cruelly moot.

In reply to MLS's objection to ACI's request for issuance of subpoenas, ACI states that its motion is reasonable in time and scope and constitutes neither broad nor abusive discovery but rather narrowly defines the type of documents to be produced and restricts the time period for which those specifically-described documents are requested. ACI, by its attorney, points out that the subpoenas would permit the witnesses to review their own files at a time when it would be most convenient for them to do so. Only the particular documents requested would need to be brought to the hearing. If MLS has provided no unauthorized service to the airlines then no documents need be produced. It is ACI's position that any illegal business relationship should be terminated. ACI replies further that the only way to determine whether any existing business relationships are illegal is to ". . . bring Respondent and the airline representatives into the same hearing room at the same time, and subject them to examination under oath before an Administrative Law Judge, who can observe the demeanor of the witnesses and determine who is being truthful and who is not." It is ACI's position that existing conflict in the record, much of which is in the form of affidavits, amply demonstrates the need for testimony from individuals other than those representing the parties to this case.

Subpoenas are hereby issued simultaneously with this order to Mr. Hajoun and representatives of four of the five airlines. No subpoena has been issued to Saudi Arabian Airlines inasmuch as that company's testimony is outside the scope of Order No. 3607, served February 5, 1991. Likewise, consistent with Order No. 3607, the subpoenas issued are limited to documents pertaining to transportation of flight crews between points in the Metropolitan District. Documents pertaining to transportation wholly within the Commonwealth of Virginia are not included in the subpoenas. The time period relevant to the hearing in the above-captioned case commences June 5, 1990, and the subpoenas issued reflect that fact. Individuals named and their addresses are identical with those contained in the request for subpoenas; names of airlines have been standardized and formalized as deemed appropriate. The Commission notes that all addresses are local. Finally, it is noted that documents subpoenaed pertain to documents relating to the defendant in this case, Madison Limousine Service, Inc. It is assumed that ACI seeks this information despite its occasional references to Madison Limousine Services, Inc.

By issuing these subpoenas, the Commission takes note of its Rule No. 18 and finds the documentary evidence for which the subpoenas are issued to be of general relevance and reasonable in scope as

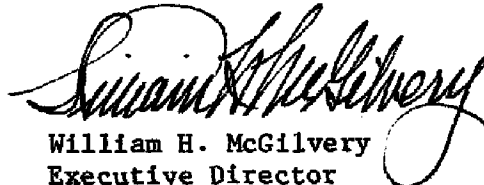
regards the matters at issue in this case. The documents to be produced have been specified with particularity and the facts expected to be proved thereby are readily apparent. Because it is not readily apparent what the named company representatives would add to the hearing other than sponsorship of the documents, the custodian of documents for each of the named airlines has been added to the subpoenas as a possible substitute for the company representative requested by ACI. If the individual specifically named in the subpoena is the custodian of records, then he must appear. Otherwise either the named individual or the custodian of documents may appear. The person sponsoring the documents must be familiar with them and able to testify to the fact that the relevant company's files have been reviewed and that the documents produced represent all documents satisfying the subpoena.

On February 19, 1991, MLS filed a Motion for More Definite Statement. The Commission believes that Order No. 3607 was sufficiently definite regarding the issues to be addressed at hearing. However, to the extent additional specificity might be needed, it has been provided by this order and the scope of the subpoenas issued pursuant thereto specifying airlines for which transportation is alleged to have been performed, geographic area within which transportation is alleged to have occurred, and in which the Commission has jurisdiction, and time period during which performance of transportation in contravention of the Compact is considered an unresolved issue.

The hearing cancelled by Order No. 3616, served March 1, 1991, is hereby rescheduled to commence Wednesday, June 5, 1991, at 10:00 a.m. in the Commission's Hearing Room, 1828 L Street, N.W., Suite 703, Washington, DC 20036-5104.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director